No. 15937

United States
COURT OF APPEALS
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

HOWARD-COOPER CORPORATION,
Respondent.

RESPONDENT'S BRIEF

On Petition for Enforcement of an Order of the National Labor Relations Board.

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JURISDICTION

Appellee concurs with the jurisdictional statements on page 1 of Appellant's Brief.

STATEMENT OF THE CASE

This case arose following a charge by the UAW-CIO that the Howard Cooper Corporation had violated the National Labor Relations Act, particularly Section 8

(a)(1) and 8 (a) (5). The Union apparently solicited some of the employees in November, 1955, but made no claim of representation until several months later. The Union claims it had cards signed by a majority of employees in November, 1955. In January, 1956, the Union wrote the Central Point, Oregon Branch of the employer, claiming that it represented hte employees. The Union followed this with a petition for a certification election to which the employer consented. The Union withdrew its petition for the election and filed unfair labor practice charges, claiming that the employer had, by talking to the employees, violated the Act. The Trial Examiner and the Board found against the employer and the Board is now asking for enforcement of the order.

SUMMARY OF ARGUMENT

The evidence on the record considered as a whole does not warrant the Board's finding that the respondent violated Section 8 (a)(1) and/or (5) of the National Labor Relations Act.

ARGUMENT

The Union's representative contacted some of the employees of the respondent company regarding Union affiliation in November, 1955 (R. 42). From a unit of twelve employees, six testified that they signed bargaining cards at that time (R. 121, 151, 174, 184, 197, 204). A meeting was held with the Union representative at that time which some of the employees attended (R.

44). The testimony as to which employees attended the meeting is conflicting. Two persons, Whiteside, the Union representative, and Bishop, an employee, both stated that seven employees attended the meeting, but Whiteside and Bishop are not in agreement as to which employees attended. Whiteside, after a little leading from the General Counsel's Attorney, named the following seven employees (R. 45, 46): Bishop, Billups, Brown, Long, Hachenberg, Henegar and Curtis. Bishop, in his testimony, says the following employees attended (R. 131): Curtis, Billups, Long, McCoy, Hachenberg, Brown and Bishop. In other words, Whiteside said Henegar was present and not McCoy, and Bishop said McCoy was present but not Henegar. This discrepancy is important as both witnesses are sure that seven employees were present. And seven employees the Union must represent in order to have a majority. Two of the above named employees, McCoy and Hachenberg, were not present at the hearing and did not testify. It is acknowledged that McCoy did not sign a Union card, because there is no claim made that he did so. No card signed by Hachenberg was presented in evidence. The General Counsel's case stands or falls on whether Hachenberg signed a bargaining card. Without Hachenberg, the Union never had a majority of the employees.

It is claimed by the Union that at a meeting in November, some of the employees asked the Union agent to refrain from making any claim of representation (R. 44), and it was not until January, 1956, that the Union representative wrote the company, claiming that he represented the employees (R. 47). Within six days of

his letter of claim, he also filed a petition for a certification election (R. 50).

An officer of the company visited the Central Point Branch in January and talked with the employees. The Board contends that the company officer, by this talk, violated the Act. There is no question but that employers may talk to employees. Nothing came out of this talk except a coffee break for the employees. The company officer advised the employees that he could not grant any increases in wages in view of the Union's claim of representation at that time. This company has periodically given increases in wages throughout its branches, during the last several years, in the month of January. The company officer would have put the wage rate into effect immediately, if he had thought he would not be violating the National Labor Relations Act by doing so. Had he put the wage rate into effect immediately, he would have been charged with a violation of the Act, and, because he did not put the wage rate into effect immediately, but, instead told the employees he could not do it because of this claim of representation, the company is charged with a violation of the Act. In this connection, it is well to take note that the files and records of this case contain full and free affidavits given by Mr. Parker, the company officer abovementioned, and Mr. Thrash, the company foreman. In other words, nothing was held back. The National Labor Relations Board investigator on the case was given every cooperation. The company felt that it had not violated the Act and had no intention of doing so.

As to the claim of majority, seven employees were required for a majority. There is only direct evidence that six employees signed bargaining cards and those six so testified. There is no direct evidence that a seventh, Hachenberg, signed a bargaining card. It must be borne in mind that these bargaining cards were signed in November, 1955, and the claim of representation made in January, 1956. Assuming that seven employees had signed bargaining cards, would seven have still authorized the Union to represent them in January, 1956, or at any later date? The problem is not what existed in November, 1955, but what was the situation in January, 1956. Could not the seventh man have changed his mind in the interim.

On January 12 and 13, nine of the employees drew up, signed and forwarded to the National Labor Relations Board office in Portland, Oregon, with copies to the Union and to the company, a paper, stating that they wished to withdraw any authority ever given the Union and desired to remain "status quo." The seventh man, Hachenberg, signed that petition. Would such a petition be forthcoming if the employees wanted the Union to represent them in January when the company is charged with refusing to bargain? The Union contends that its representative advised several of the employees to sign the petition so that the company would not know that they were Union adherents (R. 81). If that is so, why then did the Union withdraw its petition for an election by which means the certification could have been determined once and for all. That factor raises

considerable doubt as to the Union's majority at the time the company is charged with the refusal to bragain.

Therefore, there is no substantial evidence against the employer on the record as a whole, to support a finding that the employer unlawfully interfered with the rights of its employees or refused to bargain with a duly authorized representative of a majority of its employees.

Respectfully submitted,

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